

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DEMETRIUS DARNELL WARLICK,

Plaintiff,

v.

ROSIE LEE WARLICK and the  
INTERNAL REVENUE SERVICE,

Defendants.

Case No. C05-5037RBL

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
JULY 29<sup>th</sup>, 2005**

This 42 U.S.C. § 1983 civil rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Plaintiff is an inmate proceeding *in form pauperis*. After reviewing the complaint the undersigned recommends that the action be **DISMISSED WITH PREJUDICE** for failure to state a claim with the dismissal counting as a strike pursuant to 28 U.S.C. § 1915 (g).

Plaintiff alleges his mother Rosie Lee Warlick has filed fraudulent tax returns and improperly claimed him as a dependent child. (Dkt. # 4 complaint). Plaintiff alleges he brought the improper conduct to the attention of the Internal Revenue Service, but, nothing was done. (Dkt. # 4 complaint). Plaintiff alleges he has not been in his mother's care since 1991. He brings this action and seeks to recover \$6000 dollars from his mother and \$6000 from the Internal Revenue Service. The complaint fails to state a claim and the court can not picture an amendment that would cure the defects in this fact pattern.

In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (l) the

conduct complained of was committed by a person acting under color of state law and that (2) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

Mr. Warlick's mother was not acting under color of state law in filing tax returns. The allegation that information in the returns was fraudulent does not create a cause of action under the Civil Rights Act, 42 U.S.C. § 1983. Further, the Internal Revenue Service is not obligated to Mr. Warlick to either investigate or take action on information he may provide to them. Finally, the Internal Revenue Service is not a person.

*In forma pauperis* complaints may be dismissed before service under 28 U.S.C. § 1915 (e)(2)(B)(ii). Neitzke v. Williams, 490 U.S. 319, 324 (1989). Leave to amend is not necessary where it is clear that the deficiencies in the complaint cannot be cured by amendment. Dismissal for failure to state a claim counts as a strike under the Prison Litigation Reform section 28 U. S. C. § 1915 (g). The action should be **DISMISSED WITH PREJUDICE** and counting as a strike. A proposed order accompanies this report and recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **July 29<sup>th</sup>, 2005**, as noted in the caption.

DATED this 28<sup>th</sup> day of June, 2005.

  
Karen L. Strombom  
United States Magistrate Judge